## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION DOCKET NO. 3:90-cr-85-MOC-7

UNITED STATES OF AMERICA,	)	
	)	
	)	
	)	
Vs.	)	ORDER
	)	
GARY L. DAVIS,	)	
	)	
Defendant.	)	

**THIS MATTER** is before the Court on defendant's pro se "Motion to Appeal by Permission." (Doc. No. 221). Defendant is presently incarcerated, serving a sentence of 568 months incarceration. <u>See</u> (Doc. No. 178).

In his motion, defendant states in relevant part that he is seeking a minor role reduction under sentencing guideline amendment 794. Amendment 794 amended the commentary to § 3B1.2 to address what the Commission considered was an inconsistent application of the mitigating role reduction for low-level offenders. In particular, the amendment added a non-exhaustive list for the court to consider when determining whether to apply the guideline and to what extent. See U.S.S.G. § 3B1.2 cmt. n.3(C) (2015). The Commission made the amendment effective for defendants sentenced on or after November 1, 2015.

Review of the pleadings reveals that defendant was sentenced in this matter in 1990 and judgment became final in 1993. Thus, Amendment 794 has no application to this case. Further, Amendment 794 does not apply retroactively to sentences that have become final. Kemp v. United States, 2017 WL 455403, at \*1 (E.D.N.C. Feb. 2, 2017).

## **ORDER**

## IT IS, THEREFORE, ORDERED that defendant's "Motion to Appeal by Permission," (Doc. No. 221), is **DENIED**.

Signed: June 3, 2019

Max O. Cogburn Jr United States District Judge